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8
9 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 RYAN PAUL KYES
3344 West Sonoma
14 Stockton, CA 95204

15 Field Representative's License No. FR 38246

16 Respondent.

Case No. 2009-23

**DEFAULT DECISION
AND ORDER**

[Gov. Code §11520]

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18 **FINDINGS OF FACT**

19 1. On or about October 17, 2008, Complainant Kelli Okuma, in her official
20 capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of
21 Consumer Affairs, filed Accusation No. 2009-23 against Ryan Paul Kyes ("Respondent") before
22 the Structural Pest Control Board.

23 2. On or about February 16, 2005, the Structural Pest Control Board
24 ("Board") issued Field Representative's License Number FR 38246 in Branch 2 (general pest) to
25 Respondent. Respondent's field representative's license will expire on June 30, 2010, unless
26 renewed.

27 3. On or about October 24, 2008, Praveen K. Singh, an employee of the
28 Office of the Attorney General, served by certified and first class mail a copy of Accusation

1 No. 2009-23 and the related documents (Statement to Respondent, Notice of Defense, Request
2 for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7) to Respondent's
3 address of record with the Board, which was and is:

4 3344 West Sonoma
5 Stockton, CA 95204.

6 A copy of Accusation No. 2009-23 is attached as exhibit A and is incorporated herein by
7 reference.

8 4. Service of the Accusation was effective as a matter of law under the
9 provisions of Government Code section 11505, subdivision (c).

10 5. Government Code section 11506 states, in pertinent part:

11 (c) The respondent shall be entitled to a hearing on the merits if the
12 respondent files a notice of defense, and the notice shall be deemed a specific
13 denial of all parts of the accusation not expressly admitted. Failure to file a notice
14 of defense shall constitute a waiver of respondent's right to a hearing, but the
15 agency in its discretion may nevertheless grant a hearing.

16 6. Respondent failed to file a Notice of Defense within 15 days after service
17 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
18 Accusation No. 2009-23.

19 7. Government Code section 11520 states, in pertinent part:

20 (a) If the respondent either fails to file a notice of defense or to appear at
21 the hearing, the agency may take action based upon the respondent's express
22 admissions or upon other evidence and affidavits may be used as evidence without
23 any notice to respondent.

24 8. Pursuant to its authority under Government Code section 11520, the Board
25 finds Respondent is in default. The Board will take action without further hearing and, based on
26 the evidence on file herein, finds that the allegations in Accusation No. 2009-23 are true.

27 9. The total costs for investigation and enforcement in connection with the
28 Accusation are \$216.25 as of January 13, 2009.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Ryan Paul Kyes has
subjected his Field Representative's License Number FR 38246 to discipline.

2. A copy of the Accusation is attached.
3. The agency has jurisdiction to adjudicate this case by default.
4. The Board is authorized to revoke Respondent's field representative's license based upon Respondent's alleged violation of Business and Professions Code section 8641 for failing to comply with California Code of Regulations, title 16, section 1950 (failure to verify completion of continuing education).

ORDER

IT IS SO ORDERED that Field Representative's License Number FR 38246, heretofore issued to Respondent Ryan Paul Kyes, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on April 12, 2009.

It is so ORDERED. March 13, 2009

Clifford L. Myers
FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

Attachment:

Exhibit A: Accusation No. 2009-23

Exhibit A

Accusation No. 2009-23

1 EDMUND G. BROWN JR., Attorney General
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7 Attorneys for Complainant

FILED

Date 10/17/08 By Kelli Okuma

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10 BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
11

12 In the Matter of the Accusation Against:

Case No. 2009-23

13 RYAN PAUL KYES
3344 West Sonoma
14 Stockton, CA 95204

ACCUSATION

15 Field Representative's License No. FR 38246

16 Respondent.

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18 Complainant alleges:

19 PARTIES

20 1. Kelli Okuma ("Complainant") brings this Accusation solely in her official
21 capacity as the Registrar/Executive Officer of the Structural Pest Control Board ("Board"),
22 Department of Consumer Affairs.

23 2. On or about February 16, 2005, the Board issued Field Representative's
24 License Number FR 38246 in Branch 2 (general pest) to Ryan Paul Kyes ("Respondent"),
25 employee of Clark Pest Control. On or about February 16, 2007, Respondent became employed
26 by Matrix Pest Elimination, Inc. Respondent's field representative's license will expire on June
27 30, 2010, unless renewed.

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STATUTORY AND REGULATORY PROVISIONS

3. Business and Professions Code ("Code") section 8620 provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

4. Code section 8641 states:

Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for wood-destroying pests or organisms, or furnishing a notice of work completed prior to the completion of the work specified in the contract, is a ground for disciplinary action.

5. Code section 8593 states:

The board shall require as a condition to the renewal of each operator's and field representative's license that the holder submit proof satisfactory to the board that he or she has informed himself or herself of developments in the field of pest control either by completion of courses of continuing education in pest control approved by the board or equivalent activity approved by the board. In lieu of submitting that proof, the licenseholder, if he or she so desires, may take and successfully complete an examination given by the board, designed to test his or her knowledge of developments in the field of pest control since the issuance of his or her license.

The board shall develop a correspondence course or courses with any educational institution or institutions as it deems appropriate. This course may be used to fulfill the requirements of this section. The institution may charge a reasonable fee for each course.

The board may charge a fee for the taking of an examination in each branch of pest control pursuant to this section in an amount sufficient to cover the cost of administering each examination, provided, however, that in no event shall the fee exceed fifty dollars (\$ 50) for each examination.

6. California Code of Regulations, title 16, section ("Regulation") 1950 states, in pertinent part:

(a) Except as provided in section 1951, every licensee is required, as a condition to renewal of a license, to certify that he or she has completed the continuing education requirements set forth in this article. A licensee who cannot verify completion of continuing education by producing certificates of activity completion, whenever requested to do so by the Board, may be subject to disciplinary action under section 8641 of the code.

(b) Each licensee is required to gain a certain number of continuing education hours during the three year renewal period. The number of hours required depends on the number of branches of pest control in which licenses are held. The subject matter covered by each activity shall be designated as

1 "technical" or "general" by the Board when the activity is approved. Hour values
2 shall be assigned by the Board to each approved educational activity, in
3 accordance with the provisions of section 1950.5.

4 (d) Field representatives licensed in one branch of pest control shall have
5 completed 16 continuing education hours, field representatives licensed in two
6 branches of pest control shall have completed 20 continuing education hours, field
7 representatives licensed in three branches of pest control shall have completed 24
8 continuing education hours during each three year renewal period. In each case, a
9 minimum of four continuing education hours in a technical subject directly
10 related to each branch of pest control held by the licensee must be gained for each
11 branch of pest control licensed and a minimum of eight hours must be gained
12 from Board approved courses on the Structural Pest Control Act, the Rules and
13 Regulations, or structural pest control related agencies' rules and regulations.

14 (f) No course, including complete operator's courses developed pursuant to
15 section 8565.5, may be taken more than once during a renewal period for
16 continuing education hours.

17 Cost Recovery

18 7. Code section 125.3 states, in pertinent part, that a Board may request the
19 administrative law judge to direct a licensee found to have committed a violation or violations
20 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case.

22 CAUSE FOR DISCIPLINE

23 (Failure to Verify Completion of Continuing Education)

24 8. In or about September 2007, Respondent submitted a Delinquent Renewal
25 Application to the Board. On September 24, 2007, Respondent certified under penalty of perjury
26 on the application form that he completed 20 hours of continuing education during his last
27 renewal period.

28 9. On November 27, 2007, January 15, 2008, and March 3, 2008,
representatives of the Board sent Respondent written requests for copies of his continuing
education certificates for the renewal period of July 1, 2004, through June 30, 2007. Respondent
was advised that if he was unable to verify the continuing education requirements or failed to

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1 comply with the written requests, his field representative's license would be subject to
2 disciplinary action.

3 10. Respondent is subject to disciplinary action pursuant to Code section 8641
4 in that he failed to comply with Regulation 1950 by failing to verify that he completed courses of
5 continuing education in pest control approved by the Board. Specifically, Respondent failed to
6 produce copies of his continuing education certificates for the renewal period of July 1, 2004,
7 through June 30, 2007, as requested by the Board's representatives.

8 OTHER MATTERS

9 11. Code section 8620 provides, in pertinent part, that a respondent may
10 request that a civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of
11 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request
12 must be made at the time of the hearing and must be noted in the proposed decision. The
13 proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

14 12. Pursuant to Code section 8654, if discipline is imposed on Field
15 Representative's License Number FR 38246, issued to Ryan Paul Kyes, Ryan Paul Kyes shall be
16 prohibited from serving as an officer, director, associate, partner, qualifying manager, or
17 responsible managing employee for any registered company during the time the discipline is
18 imposed, and any registered company which employs, elects, or associates Ryan Paul Kyes shall
19 be subject to disciplinary action.

20 PRAYER

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein
22 alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

23 1. Revoking or suspending Field Representative's License Number
24 FR 38246, issued to Ryan Paul Kyes;

25 2. Prohibiting Ryan Paul Kyes from serving as an officer, director, associate,
26 partner, qualifying manager or responsible managing employee of any registered company during
27 the period that discipline is imposed on Field Representative's License Number FR 38246, issued
28 to Ryan Paul Kyes;

1 3. Ordering Ryan Paul Kyes to pay the Structural Pest Control Board the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3;

4 4. Taking such other and further action as deemed necessary and proper.

5 DATED: 10/17/08

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KELLI OKUMA
Registrar
Structural Pest Control Board
Department of Consumer Affairs
State of California

Complainant